

BRB No. 06-0432

EUGENE HAWKINS)	
)	
Claimant-Petitioner)	
)	
v.)	
)	
SSA-COOPER LLC)	
)	
and)	
)	
HOMEPORT INSURANCE COMPANY)	DATE ISSUED: 12/15/2006
)	
Employer/Carrier-)	
Respondents)	DECISION and ORDER

Appeal of the Order Awarding Attorneys' Fees of Stuart A. Levin,
Administrative Law Judge, United States Department of Labor.

Joseph V. Camerlengo and Gregg J. Anderson (Camerlengo & Brockwell,
P.L.), Jacksonville, Florida, for claimant.

Donovan A. Roper (Roper & Roper, P.A.), Apopka, Florida, for
employer/carrier.

Before: DOLDER, Chief Administrative Appeals Judge, SMITH and
McGRANERY, Administrative Appeals Judges.

PER CURIAM:

Claimant appeals the Order Awarding Attorneys' Fees (2004-LHC-01295) of
Administrative Law Judge Stuart A. Levin rendered on a claim filed pursuant to the
provisions of the Longshore and Harbor Workers' Compensation Act, as amended, 33
U.S.C. §901 *et seq.* (the Act). The amount of an attorney's fee award is discretionary and
may be set aside only if the challenging party shows it to be arbitrary, capricious, an
abuse of discretion, or not in accordance with law. *See Muscella v. Sun Shipbuilding &
Dry Dock Co.*, 12 BRBS 272 (1980).

Claimant injured his right knee and ruptured his quadriceps tendon on December 12, 2002, during the course of his employment for employer as a lasher. He underwent surgery to repair the ruptured tendon on January 2, 2003. The parties agreed that claimant's right leg reached maximum medical improvement on August 24, 2003, and that he sustained a six percent permanent impairment of the right lower extremity. Employer voluntarily paid compensation for temporary total disability, 33 U.S.C. §908(b), from December 13, 2002, to August 29, 2003, and for a six percent permanent partial disability, 33 U.S.C. §908(c)(2), based on an average weekly wage of \$1,665.97. Claimant asserted that he is unable to return to work as a lasher and that employer had not established the availability of suitable alternate employment.

In his decision, the administrative law judge found that claimant is unable to return to his usual employment as a lasher or to alternate longshore jobs as an auto or van driver. The administrative law judge rejected the jobs identified in employer's September 19, 2003, labor market survey, but found that employer's labor market survey conducted on May 1, 2004, established the availability of suitable alternate employment commencing on January 5, 2004, and that claimant failed to exercise reasonable diligence in seeking alternate work. Accordingly, the administrative law judge awarded claimant compensation for permanent total disability, 33 U.S.C. §908(a), from August 24, 2003, to January 5, 2004, and, thereafter, for a six percent impairment of the right lower extremity. Employer received a credit for compensation it had paid claimant for total disability and permanent partial disability.

Claimant's counsel subsequently submitted a fee petition to the administrative law judge, requesting a fee of \$56,295.19, representing 69.9 hours of attorney time by Joseph Camerlengo at \$250 per hour, .10 hours of attorney time by P. Heath Brockwell at \$250 per hour, 135.3 hours of attorney time by Gregg Anderson at \$175 per hour, 30.7 hours of paralegal time and 109.6 hours for time expended by third-year law students at \$115 per hour, plus costs of \$5,168.96. In his Order Awarding Attorneys' Fees, the administrative law judge reduced the hourly rate of Mr. Camerlengo to \$200, of Mr. Brockwell to \$150, and he approved an hourly rate of \$175 to Mr. Anderson. The administrative law judge reduced the hourly rate for paralegal work by Ms. Biggs to \$75 and to \$60 for Ms. Liadal. The administrative law judge reduced the hourly rate for work performed by the third-year law students to \$75. The administrative law judge disapproved as office overhead 17 entries totaling 7.4 hours of attorney and paralegal time. The administrative law judge disallowed 2.6 hours at \$115 per hour by Ms. Anderson-Congo inasmuch as her job title was not identified. The administrative law judge disallowed \$750.27 for postage and photocopying, and \$300 for a deposition testimony fee inasmuch as the deposition was not offered into the record and there is no evidence that it was reasonably necessary for the prosecution of the claim. Accordingly, prior to considering the degree of success achieved by claimant, the administrative law judge approved an attorney's fee in excess of \$36,500, and paralegal and law clerk charges totaling over \$12,000. The

administrative law judge next addressed the amount of an appropriate fee in light of the level of success achieved, pursuant to *Hensley v. Eckerhart*, 461 U.S. 421 (1983). The administrative law judge found that a reduction of approximately 90 percent from the total unadjusted fees claimed of \$56,295.19 is proportionate to the award claimant secured. Accordingly, the administrative law judge awarded claimant's counsel a fee of \$6,000 and costs totaling \$4,118.52.

On appeal, claimant challenges the administrative law judge's award of a reduced attorney's fee. Claimant argues that the administrative law judge improperly reduced the requested fees by 90 percent based on the level of success he achieved. Claimant argues that he did not assert a claim alleging entitlement to compensation for permanent total disability, but he instead sought and obtained an award for past due compensation for total disability until such time as employer established the availability of suitable alternate employment. Employer responds, urging affirmance.

In the present case, the administrative law judge properly related the holding in *Hensley*, 461 U.S. 421. The administrative law judge found that there were no unrelated claims on which claimant failed to succeed. Proceeding to the second step of *Hensley*, the administrative law judge stated that the fee award should be for an amount that is reasonable in relation to the results obtained. *Hensley*, 461 U.S. at 435-436. The administrative law judge found that claimant sought compensation for continuing permanent total disability and that he received an award for permanent total disability only from the date of maximum medical improvement on August 24, 2003, through January 5, 2004. The administrative law judge found that, although claimant also received an award for a six percent permanent impairment of the right leg, employer had previously paid claimant for this impairment. The administrative law judge next found that claimant did not achieve a level of success that made the number of hours reasonably expended a satisfactory basis for the fee award. The administrative law judge found that claimant is entitled to additional compensation totaling \$19,192.06, whereas a continuing award for permanent total disability sought by claimant would exceed \$51,000 annually, and would likely have totaled in excess of \$1 million dollars over the course of his lifetime. Under these circumstances, the administrative law judge found that a fee of \$6,000 for all services rendered on claimant's behalf is reasonable and proportionate to the success achieved. The administrative law judge concluded that \$6,000 represents a reduction of approximately 90 percent from the total unadjusted fees claimed of \$56,295.19, and approximately 87.5 percent of the adjusted fees to which the administrative law judge found claimant's counsel otherwise entitled; however, he found that the compensation awarded represents a reduction of approximately 98 percent from the ultimate compensation award sought.

We reject claimant's contention that he did not seek an award of continuing permanent total disability benefits. Employer voluntarily paid compensation for total

disability from December 13, 2002, to August 29, 2003. At the hearing, the parties stipulated that claimant's leg injury reached maximum medical improvement on August 24, 2003. Tr. at 64. Consequently, any disability after August 23, 2004, would be permanent in nature, and the administrative law judge properly found that claimant alleged he sought compensation for permanent disability. *See generally Director, OWCP v. Berkstresser*, 921 F.2d 306, 24 BRBS 69(CRT) (D.C. Cir. 1990). Moreover, in response to the administrative law judge's asking claimant's counsel at the hearing whether claimant is alleging that he is permanently and totally disabled, claimant's counsel stated, "we are alleging that until such time as suitable alternate employment is established under the Act he's considered permanent and total." Tr. at 78-79. Claimant contested employer's evidence of suitable alternate employment, and the administrative law judge thus properly found that claimant sought a continuing award for permanent total disability. As claimant established his entitlement to such benefits for a period of only four and one-half months, the administrative law judge rationally found that claimant's success was limited given the scope of the benefits sought.

The administrative law judge's finding that a reduced fee was warranted in this case is thus supported by the evidence and consistent with *Hensley*. The Board has previously affirmed across-the-board reductions where the administrative law judge determined that claimant achieved limited success. *See Fagan v. Ceres Gulf, Inc.*, 33 BRBS 91 (1999)(50 percent reduction in an attorney's fee is reasonable given claimant's limited success in establishing causation and entitlement to medical benefits, but not disability benefits); *Ezell v. Direct Labor, Inc.*, 33 BRBS 19, 30-31 (1999)(90 percent reduction in an attorney's fee is reasonable given claimant's limited success in establishing entitlement to medical benefits, but not temporary total disability benefits); *Hill v. Avondale Industries, Inc.*, 32 BRBS 186, 192 (1998), *aff'd sub nom. Hill v. Director, OWCP*, 195 F.3d 790, 33 BRBS 184(CRT) (5th Cir. 1999), *cert. denied*, 530 U.S. 1213 (2000)(75 percent reduction in attorney's fees is reasonable given claimant's failure to succeed in the prosecution of his primary claim for permanent total and partial disability compensation). Under these circumstances, the administrative law judge's decision to reduce the number of hours requested by approximately 90 percent is affirmed, as claimant has not established an abuse of discretion in this regard. Claimant does not challenge any other aspect of the fee award. Therefore, it is affirmed.

Accordingly, the administrative law judge's Order Awarding Attorneys' Fees is affirmed.

SO ORDERED.

NANCY S. DOLDER, Chief
Administrative Appeals Judge

ROY P. SMITH
Administrative Appeals Judge

REGINA C. McGRANERY
Administrative Appeals Judge